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# QUESTION OF THE HUMAN RIGHTS OF PERSONS SUBJECTED TO ANY FORM OF DETENTION OR IMPRISONMENT

## Report of the Sub-Commission on Prevention of Discrimination and Protection of Minorities on the implementation of Commission on Human Rights resolution 1991/34

## INTRODUCTION

1. The General Assembly, in its resolution 45/166 of 18 December 1990, inter alia, requested the Commission on Human Rights, bearing in mind the work of the Committee on Crime Prevention and Control, to invite the Sub-Commission on Prevention of Discrimination and Protection of Minorities (a) to study the implementation of United Nations norms and standards in this field; (b) to identify problems that might impinge on the effective implementation of these standards and norms; (c) to recommend viable solutions with action-oriented proposals to the Commission.

2. In the same resolution, the General Assembly also requested the Secretary-General (a) to provide the necessary compilatory and analytical documentation to the Sub-Commission for these tasks; (b) to prepare, on the basis of comments by Member States and relevant international organizations and bodies, as well as by non-governmental organizations, a draft model text for national legislation in the field of human rights in the administration of justice; (c) to coordinate the activities of the Commission on Human Rights and the Sub-Commission with the relevant activities of the Committee on Crime Prevention and Control; (d) to invite those Member States and international

organizations and bodies that had not yet done so to comment on the aspects of human rights issues in the field of administration of justice they deemed relevant to the work of the Sub-Commission. Further, the General Assembly requested the Commission to invite the Sub-Commission to consider the draft model with a view to a further elaboration of model texts and to propose such texts to the Commission for adoption.

3. By its resolution 1991/34 of 5 March 1991, the Commission, guided by General Assembly resolution 45/166, requested the Secretary-General to establish a consolidated list of provisions in the various United Nations standards relating to human rights in the administration of justice with a view to drafting model texts for national legislation. The Commission invited the Sub-Commission, on the basis of this consolidated list, (a) to study the implementation of United Nations norms and standards in this field; (b) to identify problems that might impinge on the effective implementation of these standards and norms; (c) to recommend viable solutions with action-oriented proposals to the Commission; (d) to take the necessary action with a view to elaborating model texts for national legislation for the effective implementation of standards relating to human rights in the administration of justice; (e) to consider the question of the effectiveness of habeas corpus and similar remedies during states of emergency and to formulate suggestions thereon.

4. The Commission requested the Sub-Commission to report to it at its forty-eighth session on the implementation of Commission resolution 1991/34. The Commission also invited the Secretary-General to coordinate these activities of the Sub-Commission with the relevant activities of the Committee on Crime Prevention and Control, and requested the Secretary-General to invite a representative of the Centre for Social Development and Humanitarian Affairs to exchange ideas with the Working Group on Detention of the Sub-Commission.

## I. ACTION BY THE SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND PROTECTION OF MINORITIES

5. At its forty-third session, the Sub-Commission entrusted its sessional Working Group on Detention with the tasks contained in Commission resolution 1991/34. The Working Group met on 12, 14 and 15 August and adopted unanimously its report contained in document E/CN.4/Sub.2/1991/27.

### A. Consolidated list of provisions in the various United Nations standards relating to human rights in the administration of justice

6. In accordance with Commission resolution 1991/34, the Secretary-General prepared the consolidated list of provisions in the various United Nations standards relating to human rights in the administration of justice which was made available to the Sub-Commission and its Working Group in document E/CN.4/Sub.2/1991/26.

B. Draft model text for national legislation for the effective implementation of standards relating to human rights in the administration of justice

7. Regarding the model legislation referred to in General Assembly resolution 45/166 and Commission resolution 1991/34, the Working Group suggested that it continue its consideration of this issue at its next session, to take place in the course of the forty-fourth session of the Sub-Commission in 1992, in order to address the issues put forth by the General Assembly and the Commission.

C. Habeas corpus

8. The Working Group also considered the issue of habeas corpus. The Working Group was also informed that issues relating to habeas corpus were also under consideration by the Committee on Crime Prevention and Control, which had received a mandate from the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders to deal with the matter. The Committee expected to submit its preliminary findings to the Ninth Congress. There was general agreement among the members of the Working Group to retain this item on the agenda of the Working Group's next session. They also decided to invite Mr. Carey and Mr. Hitters to prepare an in-depth working paper on habeas corpus and amparo as non-derogable rights, with a view to assisting the Special Rapporteurs of the Sub-Commission, Mr. Chernichenko and Mr. Treat, in the preparation of their report on the right to a fair trial, so that the Sub-Commission would be in a position to examine all aspects of the issue.

9. At its 33rd meeting, on 28 August 1991, the Sub-Commission adopted resolution 1991/15 entitled "Habeas corpus", in which it recommended a draft resolution for adoption by the Commission. In the draft resolution, the Commission would call on all States that have not yet done so to establish a procedure such as habeas corpus by which anyone who is deprived of his or her liberty by arrest or detention shall be entitled to institute proceedings before a court, in order that that court may decide without delay on the lawfulness of his or her detention and order his or her release if the detention is found to be unlawful. Further, the Commission would call on all States to maintain the right to such a procedure, at all times and under all circumstances, including during states of emergency.

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